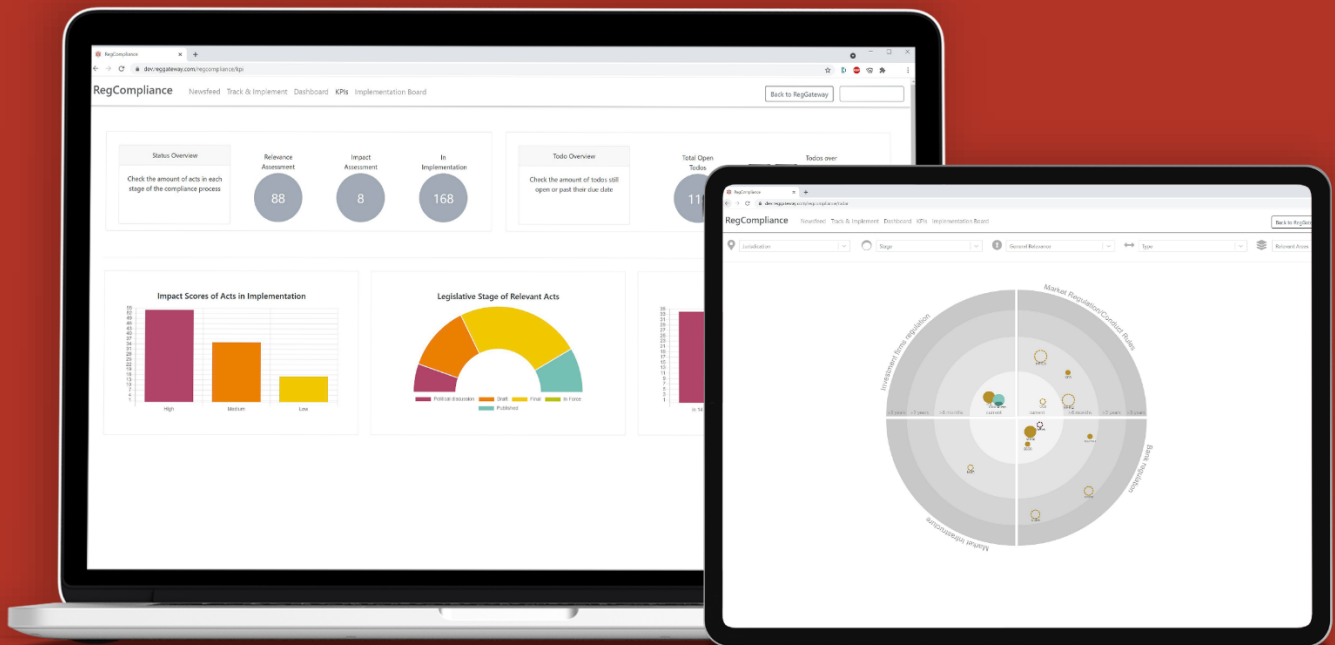


Regulatory monitoring: EU Version

Newsletter

February 2022





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CHANGE ANALYSIS AND PREVIEW OF RULES

Read the future versions of a law early, including the official explanatory memorandum, and identify any legislative changes.

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1. Bank regulation

1.1 Prudential regulation

(a) General

(i) International

BCBS: Basel III Monitoring Report

Status: Final

The BCBS has published its latest Basel III Monitoring Report, based on 30 June 2021 data. The report sets out the impact of the Basel III framework, including the December 2017 finalisation of the Basel III reforms and the January 2019 finalisation of the market risk framework. It covers 172 banks, including 110 large internationally active (Group 1) banks, among them all 30 G-SIBs, and 62 other (Group 2) banks. Findings in this report include the following: (i) for the Group 1 banks, risk-based capital ratios remained roughly stable, but leverage ratios decreased from the prior period, which was based on data until end of December 2020 (this results from a significant increase in the leverage ratio exposure measure, driven in part by the end of temporary exclusions from the leverage ratio exposure measure during the Covid-19 pandemic); (ii) the weighted average Liquidity Coverage Ratio (LCR) increased to 144% for Group 1 banks and to 225% for Group 2 banks; and (iii) the weighted average Net Stable Funding Ratio (NSFR) increased to 125% for the Group 1 bank sample and to 130% for the Group 2 bank sample, with all but one Group 1 bank reporting a ratio that met or exceeded 100%.

Date of publication: 21/02/2022

IRSG: Proposed third country regime for banking services in CRD VI

Status: Final

The International Regulatory Strategy Group (IRSG) has published its narrative on the proposed third country regime for banking services under CRD VI. The IRSG makes the following observations: (i) the new proposals mark a significant departure from the existing requirements; (ii) although the proposed changes to the prudential requirements for third country branches were assessed in the run-up to the adoption of the proposals by the EC, it appears there was no detailed impact assessment on the market access restrictions proposed in Article 21c; (iii) the broad scope of the requirements will result in fragmentation of markets, creating problems for EU corporates, due to a loss of access to financing and account options, and EU firms carrying out core banking services. For example, it would be more problematic for EU entities and individuals to have bank accounts in non-EU jurisdictions, more challenging for EU corporates to raise finance or develop their businesses abroad, and harder for EU banks and investment firms to access international interdealer markets; (iv) new barriers for EU firms, retail clients and citizens to access international capital markets would hinder the development of the Capital Markets Union, which the IRSG has argued before should consist of both internal EU market integration alongside openness to international markets; (v) the EU proposals appear tougher than the regulations governing cross-border market access into other important jurisdictions. Subject to certain criteria, a local establishment is not required for EU entities to deal cross-border into either the UK, US or Switzerland, for example; (vi) since the adoption of the CRD VI, there have been statements from the Commission suggesting an openness to consider narrowing the scope of the market access restrictions in CRD VI. This is welcomed, and the IRSG, along with other bodies, is working to identify precisely what amendments may be required both to Article 21c, but also as regards the linked provisions in Article 48; (vii) the EU will be an outlier in comparison to other jurisdictions such as Switzerland, the US, the UK and other major jurisdictions which allow firms to engage in cross-border business without the establishment of a locally authorised branch; and (viii) overall, the IRSG supports market access rules that increase harmonisation across the EU, but which do not unduly constrain the access to international markets and services currently enjoyed by EU entities and citizens.

Date of publication: 15/02/2022

BCBS: Speech on implementation of Basel III reforms in Europe**Status: Final**

The BCBS has published a speech by Pablo Hernández de Cos, BCBS Chair and Governor of the Bank of Spain. Mr Hernández de Cos challenges a number of assertions in relation to the Basel III reforms, including claims that they have not been adequately designed to reflect jurisdiction- or region-specific characteristics, and that their implementation will impede economic growth and banks' ability to tackle structural trends and challenges. He states that these do not accurately reflect the rigorous consultation process that the BCBS followed and the adjustments that were made in the process. Quantitative analyses have shown that capital requirements of banks will not be significantly increased and it is increasingly clear that they will have a positive net impact on the economy.

With regards to the EC's proposals to implement Basel III, primarily through the CRR III, Mr Hernández de Cos has some concerns: (i) the proposal already foresees a two-year delay compared with the globally agreed timeline. Any further delays could result in the European banking system being insufficiently prepared to face future shocks and could even have undesirable knock-on effects on the implementation process in other jurisdictions; (ii) there are some deviations from the Basel III standards including several in the credit risk framework. Such deviations would not be in the best interest of Europe, as they could undermine the credibility and robustness of Europe's bank capital framework and could leave specific risk exposures under-capitalised. For example, with collateral valuation, the BCBS is already identifying a build-up of systemic risk in real estate markets in different jurisdictions; and (iii) in its implementation of the output floor, the EC has introduced a number of transitional adjustments when it comes to residential real estate, unrated corporates and derivative exposures. These adjustments should be avoided as they present a deviation from Basel III, are unfounded from prudential or financial stability grounds, and could trigger a 'race-to-the-bottom'.

Date of publication: 08/02/2022

(b) Solvency/Own funds issues**(i) EU****EC: Commission Delegated Regulation (EU) .../... supplementing the CRR with regard to RTS on liquidity horizons for the alternative internal model approach, as referred to in Article 325bd(7) of the CRR****Status: Adopted by the EC**

The EC has adopted the Delegated Regulation supplementing the CRR with regard to RTS on liquidity horizons for the alternative internal model approach (IMA) under the Fundamental Review of the Trading Book (FRTB), as referred to in Article 325bd(7) of the CRR. This delegated regulation aims to clarify how institutions are to map the risk factors to the relevant category and sub-category. It aims to specify which currencies and currency pairs constitute the most liquid currency sub-categories. The draft regulation also provides a definition of large and small capitalisation reflecting the specificities of the EU equity market.

Date of publication: 28/02/2022

EBA: Final draft RTS on emerging markets and advanced economies under Article 325ap(3) of the CRR**Status: Final**

The EBA has published its final draft RTS on the list of countries with an advanced economy for calculating the equity risk under the alternative standardised approach (FRTB-SA) in the CRR. The RTS will be part of the phase 3 deliverables of the EBA roadmap for the new market and counterparty credit risk approaches. The FRTB standards provide a list of advanced economies that leaves out some EU countries. The EBA, accordingly, analysed an extensive sample of equity names to assess whether equity names related to economies included in the FRTB list are less volatile than those relating to the excluded EU countries. The results show that this is not the case. The EBA concludes that the absence of quantitative evidence supporting the exclusion of some EU countries from the list, along with several qualitative arguments supporting their inclusion – in particular the fact that the EU has a single internal market, and as such the systematic component of the risk associated with an equity name can be EU based (as opposed to country based) – constitute a sufficient basis to conclude that all EU countries should be treated as advanced for the purpose of identifying the equity risk in the FRTB-SA. Furthermore, considering the EEA

relevance of this draft regulation, and considering that the same arguments presented above could be replicated at EEA level, EEA countries not belonging to the Union should be recognised as advanced too.

Date of publication: 02/02/2022

(c) Securitisation

(i) EU

ESMA: Launch of new register for STS securitisation notifications

Status: Final

ESMA has launched a new register on simple, transparent, and standardised (STS) securitisation notifications. This register provides a list of all securitisations (traditional and synthetic) that comply with the STS criteria set out in Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557 (SECR). The new register replaces the previous STS list for traditional STS securitisations. The previous STS list for traditional STS securitisation will be disabled once all the STS traditional securitisations notified to ESMA before 2 February 2022 are moved to the new STS register. Until further notice, originators and sponsors should continue to report their STS notifications of synthetic STS securitisations, cancelled synthetic STS securitisations, master trust STS securitisations and securitisations no longer meeting the STS requirements to the STSnotifications@esma.europa.eu mailbox. As of 2 February 2022, all notifications for traditional STS securitisations must be submitted to ESMA via the ESMA Register portal. The previous STS notification templates for traditional STS securitisations are replaced by new STS templates to be used under the new STS register and can be downloaded from the STS securitisation notifications webpage.

Date of publication: 02/02/2022

(d) Liquidity

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to LCR for credit institutions

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to liquidity coverage requirement (LCR) for credit institutions to cater for covered bonds. The EU rules from 2019 on covered bonds (ie debt obligations issued by credit institutions that offer optimal protection to bondholders) introduced a liquidity buffer requirement that is thought to overlap with the LCR introduced in 2015. This initiative aims to amend the LCR rules to cater for the specific situation of covered bonds. It also intends to fix ambiguous or outdated rules. In particular, the proposed amendments seek to: (i) better align the text with the LCR standard agreed at international level by the Basel Committee on Banking Supervision; (ii) insert a reference to official export credit agencies (ECAs) so as to ensure equal treatment of securities issued by ECAs guaranteed by the central government of a Member State, irrespective of the organisational structure of the respective ECA; and (iii) add several additional changes to the LCR Delegated Regulation to align it with Article 129 of the CRR.

The EP has now published a new [procedure file](#) for this proposal, which records that the initial three-month period for examining the delegated act commenced on 10 February and that it is in the preparatory phase in Parliament.

Date of publication: 10/02/2022

(e) Leverage ratio**(i) EU****ECB: No extension of the capital and leverage relief for banks****Status:** Final

The ECB has announced that it will not extend the capital and leverage temporary relief measures for banks. It will not allow banks to operate below the level of capital defined by its Pillar 2 Guidance beyond December, nor extend beyond March the supervisory measure that allows banks to exclude central bank exposures from leverage ratios. These two temporary measures were introduced in response to the Covid-19 pandemic. The ECB also amended its [FAQ](#) on these measures to reflect this decision.

Date of publication: 10/02/2022

(f) Authorisation and passporting**(i) EU****Commission Delegated Regulation (EU) 2022/192 amending the RTS laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services under CRD IV****Status:** Published in the OJ**Date of entry into force:** 06/03/2022

Commission Delegated Regulation (EU) 2022/192 amending the RTS laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services under CRD IV has been published in the OJ. This act amends Delegated Regulation No 1151/2014 regarding the information provided by the credit institution with a branch passport notification, ensures the safety of deposits, seeks to enhance factual certainty and reliability of the financial information provided by the credit institution to the competent authorities, and details the service passport notification. Together with the entry below, this regulation is based on the [EBA final draft](#) as of 18 June 2021.

Date of publication: 14/02/2022

Commission Implementing Regulation (EU) 2022/193 amending the ITS laid down in Implementing Regulation (EU) No 926/2014 laying down standard forms, templates and procedures as regards the information to be notified when exercising the right of establishment and the freedom to provide services**Status:** Published in the OJ**Date of entry into force:** 06/03/2022

Commission Implementing Regulation (EU) 2022/193 amending the ITS laid down in Implementing Regulation (EU) No 926/2014 laying down standard forms, templates and procedures as regards the information to be notified when exercising the right of establishment and the freedom to provide services has been published in the OJ. This act amends the standard forms and templates, which are laid down in the Annexes. Furthermore, certain legal references in Implementing Regulation No 926/2014 are updated in order to ensure legal certainty. Together with the entry above, this regulation is based on the [EBA final draft](#) as of 18 June 2021.

Date of publication: 14/02/2022

(g) Large exposures/Limits to shadow banking entities

(i) EU

EBA: Updated methodology for assessing third country equivalence of regulatory and supervisory frameworks

Status: Final

The EBA has updated its questionnaires that are used to assist the EC in assessing third country equivalence of regulatory and supervisory frameworks, in order to reflect amendments in the CRR II and CRD V. Under the CRR, certain exposures to non-EU entities can be treated, in terms of risk-weights, as exposures in EU Member States, provided that the EC has determined that the third country's supervisory and regulatory arrangements are equivalent to those in the EU. The assessment is based on two questionnaires: (i) a first-step questionnaire, which provides an initial screening, focusing on the most relevant requirements and principles and identifying similar laws in place; and (ii) a second-step questionnaire, which allows for a granular and more detailed investigation of the third country's frameworks by identifying and mapping similar rules and provisions to the CRR and analysing the divergences.

- [EBA methodology for the assessment of regulatory and supervisory equivalence of third countries – 1st step](#)
- [EBA methodology for the assessment of regulatory and supervisory equivalence of third countries – 2nd step](#)

Date of publication: 21/02/2022

1.2 Recovery and resolution

(i) EU

EBA: Follow-up to the ESRB recommendation on identifying legal entities

Status: Final

The EBA has provided a follow-up report on the assessment of the implementation of Recommendation B of the ESRB recommendation on identifying legal entities (ESRB/2020/12). The report sets out relevant information and documentation related to the implementation of this recommendation, including: (i) information on the substance (such as on the legal form of the measure and on the type of financial institutions covered); and (ii) the timing of the actions taken.

Date of publication: 25/02/2022

ECON: Report on proposed Regulation on MREL and TLAC amendments to CRR

Status: Draft

The EP has published a report adopted by ECON on the legislative proposal for a Regulation making targeted amendments to the CRR relating to total loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL). The report sets out a draft EP legislative text. The proposed reforms relate to the prudential treatment of G-SII groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting MREL, referred to as the 'Daisy Chain' proposal, and follow on the vote as described below.

Date of publication: 04/02/2022

ECON: Vote for targeted changes to the "Daisy Chain" proposal

Status: Final

The MEPs agreed on changes to improve the resolution framework for EU banks. The Economic and Monetary Affairs Committee (ECON) voted for targeted changes to the "Daisy Chain" proposal providing systematically important banks with a sound resolution strategy. After the text was adopted with 45 votes to 2 and 11 abstentions, Jonás Fernández, the lead MEP on the file, said: "The text adopted today by a large majority introduces several important points significantly improving on the EC

proposal. These include: (i) the introduction of a cap for the deduction mechanism (Daisy Chain) proposed by the EC; (ii) the inclusion of a request for the EC to assess the impact of the "Daisy Chain" framework on the different banking group structures to avoid any unintended consequences; and (iii) the establishment of a transitional arrangement that allows the application by the European Resolution Authority of a transitional deduction regime applicable to MPE groups under certain restrictive conditions." The Council negotiating mandate was adopted by EU ministers in December 2021.

Date of publication: 03/02/2022



2. Investment firms regulation

(i) EU

Commission Delegated Regulation (EU) 2022/244 supplementing the IFR with regard to RTS specifying the amount of total margin for the calculation of the K-factor 'clear margin given' (K-CMG)

Status: Published in the OJ

Date of entry into force: 14/03/2022

The Commission Delegated Regulation (EU) 2022/244 supplementing the IFR with RTS which specifies the calculation of the amount of the total margin required and the method of calculation of the K-factor 'clear margin given' (K-CMG) under the IFR has been published in the OJ.

Date of publication: 22/02/2022

EBA: Opinion on the European Commission's amendments relating to the final draft RTS for own funds requirements for investment firms based on fixed overheads in line with Article 13(4) of the IFR

Status: Final

The EBA has published an Opinion on the [EC's amendments](#) relating to the final draft RTS for own funds requirements for investment firms based on fixed overheads in line with Article 13(4) of the IFR. The changes concern an additional point for deduction from total expenses in the case of investment firms that are market makers. With regard to the amendments envisaged by the Commission which are of a substantive nature, the EBA considers that they alter the draft RTS in a significant manner from the policy perspective and therefore warrant a formal opinion as set out in Article 10 of the EBA Regulation. The EBA is however also of the view that the amendments, despite the substantive nature of the changes, continue to maintain a good balance between the flexibility and risk sensitivity required for the calculation of the fixed overheads requirement and the need for a harmonised regulatory framework. Consequently, the EBA has no concerns in terms of the proposed amendments. Lastly, the EBA also agrees with the remaining changes summarised in the subsection 'Nonsubstantive changes', due to their nature as non-substantive and given their usefulness in clarifying the text.

Date of publication: 11/02/2022

3. Market regulation/Conduct rules

3.1 Benchmarks

(i) EU

EC: Adoption of an updated initiative on the supervisory fees, fines and penalties for benchmark administrators under the Benchmark Regulation

Status: Adopted by the EC

The EC has adopted an updated initiative on the supervisory fees, fines and penalties for benchmark administrators under the BMR. This initiative establishes: (i) the fees that benchmark administrators need to pay ESMA for supervision; and (ii) the procedure ESMA needs to follow to impose fines or penalties on benchmark administrators under its supervision.

Date of publication: 16/02/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. The Delegated Regulation will amend the RTS to remove from the derivatives trading obligation the classes of derivatives that currently reference GBP LIBOR or USD LIBOR, as they will no longer meet the condition laid down in Article 32(1) of MiFIR. The Council of the EU and the EP will now scrutinise the Delegated Regulations.

Date of publication: 08/02/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. The Delegated Regulation will amend the RTS to remove from the clearing obligation those classes of derivatives that reference EONIA, GBP LIBOR or JPY LIBOR as they no longer meet the relevant conditions in EMIR. It will also bring within the clearing obligation classes of OTC interest rate derivatives referencing ESTR, SOFR, SONIA or TONA that certain CCPs have been authorised to clear.

Date of publication: 08/02/2022

3.2 Capital markets union

(i) EU

ESMA: Response to EC targeted consultation on the Listing Act

Status: Final

ESMA has published its response to the EC targeted consultation on the Listing Act. The authority states that this response reflects its views on the functioning of the existing regulatory framework for companies' listing on public markets, particularly in

relation to prospectus, corporate governance, transparency, and market abuse rules. On this basis, ESMA believes that, while the broad regulatory framework in place regarding listing activities is strong and effective, there is some scope to streamline certain rules and find ways to carefully alleviate certain burdens for issuers, which may in turn reduce costs and enhance incentives for listing. However, strong investor protection should remain a prerequisite in consideration of any such changes.

Date of publication: 15/02/2022

3.3 Consumer protection rules

(i) EU

EC: Consultation on options to enhance the suitability and appropriateness assessments

Status: Consultation

Deadline for the submission of comments: 21/03/2022

The EC has launched a consultation on options to enhance the suitability and appropriateness assessments. This consultation complements last year's broader consultation on the EC's retail investment strategy where respondents called for improvements to the MiFID II/IDD regime. This consultation explores the feasibility of a new retail investor-centric suitability and appropriateness test that no longer differentiates among the various investment services offered to retail investors and replaces the current 'per product' approach with a personalised asset allocation strategy. While the strategy would provide concrete guidance on optimal investment allocations, the investor would remain free to choose the products it wants to invest in. The strategy could achieve this by setting out an investment plan that relied on an optimal diversification of various asset classes considered fit for retail investors. This could include a defined exposure to any financial instruments and products distributed to retail investors. The strategy could identify, on an overall portfolio basis, the appropriate risk-return for each individual profile with a view to achieving the investor's investment goals. However, retail investors should ultimately remain free to take autonomous investment decisions, even where they do not align with the allocation strategy. A key element of this new tool could be the transferability of the client assessment (enhanced with a personalised asset allocation strategy) with any financial intermediary the client chooses.

Date of publication: 21/02/2022

EP: Draft report on the proposal for a Consumer Credit Directive

Status: Draft

The EP's Committee on the Internal Market and Consumer Protection has published a draft report on the proposed Consumer Credit Directive (CCD). The draft report sets out a draft EP legislative resolution with amendments to the EC's proposed Directive. In the explanatory memorandum, the Rapporteur proposes, among other things: (i) a widening of the scope of the CCD to both hiring and leasing agreements, including leasing agreements without a purchase option; (ii) that peer-to-peer crowdfunding lending does not fall within the current scope of the CCD as the proposal does not sufficiently address associated issues. Instead, the Rapporteur proposes that the EC comprehensively revises the CCD in 2024 at the latest, with special focus on peer-to-peer crowdfunding lending; (iii) a ban of personalised advertisements and an obligation to only show standardised offers. The requirements on advertisements should be extended with information on the consequences and/or costs of missed payments and Member States should prohibit misleading advertisements that underexpose the consequences of a loan, risk creating over-indebtedness and focus on the ease of obtaining a loan; (iv) not to introduce another form to be provided to consumers on pre-contractual information, but to restructure the currently existing Standard European Consumer Credit Information form adding information on missed payments and the right of withdrawal; (v) a list of objective financial data that shall be used to assess someone's creditworthiness. Data coming from social media should never be used in these assessments and also data on the consumer's health and medical situation or history with cancer; (vi) that the EBA, along with stakeholders from the industry and consumer representatives, develops a range of standardised environmentally sustainable consumer credit products; and (vii) a new Article on debt collection, laying down rules on the debt collection process. Member States shall prohibit a number of practices, with a view to avoiding situations of harassment of consumers.

Date of publication: 07/02/2022

ECON: Draft opinion on the proposal for a directive on consumer credits**Status: Final**

The European Parliament's Economic and Monetary Affairs Committee (ECON) published a draft opinion dated 27 January 2022 on the proposal for a directive of the EP and of the EC on consumer credit. The draft opinion aims to complement the EC's proposal with additional measures to enhance further consumer protection while keeping the right balance with credit providers' duties. These concern: (i) preventing household over-indebtedness: ECON posits, first, that the conditions under which credit can be granted when the creditworthiness assessed is negative should be tightened. Secondly, caps on charges should be introduced, such as annual percentage rate of charge caps on variable borrowing rates and on various types of consumer credit products. Thirdly, ECON also suggests that consumers should benefit from a better financial education, better information on products, under the medium of their choice, and from additional time to understand and compare offers. To this aim, a Standard European Consumer Credit Overview should summarise the key elements of the credit in a graphical form, in addition to the Standard European Consumer Credit Information form; (ii) digitalisation of these financial services on consumer data protection: ECON submits that the type of consumer data used to define personalised offers and the creditworthiness assessment should therefore not include sensitive data, as laid down in the GDPR. Consumers should be explicitly informed when they are presented with a personalised offer based on profiling or other types of automated processing of personal data; and (iii) sustainable finance: to support the greening of the European economy, ECON proposes more favourable credit conditions regarding socially and environmentally sustainable products.

Date of publication: 01/02/2022

3.4 MiFID/MiFIR

(i) EU**EC: Commission Delegated Regulation (EU) .../... supplementing MiFIR by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the ESMA regarding data reporting service providers****Status: Adopted by the EC**

The EC has adopted an initiative under MiFIR on the fines or penalties for data reporting services providers under ESMA supervision. This initiative sets out the administrative procedure that ESMA needs to follow for imposing fines or penalties on the data reporting services providers it supervises.

Date of publication: 16/02/2022

ESMA: Launch of a common supervisory action with NCAs on MiFID II costs and charges**Status: Final**

ESMA has launched a common supervisory action with NCAs on MiFID II costs and charges. The focus will be on information provided to retail clients. NCAs, in particular, will review how firms ensure that these disclosures: (i) are provided to clients in a timely manner; (ii) are fair, clear and not misleading; (iii) are based on accurate data reflecting all explicit and implicit costs and charges; and (iv) adequately disclose inducements. ESMA states that its Q&As on MiFID II and MiFIR investor protection and intermediary topics will serve as input to the supervisory action.

Date of publication: 08/02/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts**Status: Adopted by the EC**

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. For more information, please see section 3.1 above.

Date of publication: 08/02/2022

ESMA: Supervisory briefing on supervisory expectations in relation to firms using tied agents in the MiFID II framework

Status: Final

ESMA has published a supervisory briefing setting out its supervisory expectations in relation to firms providing investment services and/or performing investment activities through the use of tied agents under MiFID II. Following the UK's withdrawal from the EU, ESMA has been monitoring the behaviour of firms in order to understand whether their interaction with EU-based clients is done in a way that is compliant with the MiFIR and MiFID legislation – including the regimes providing the conditions for third country firms to provide investment services and activities in the Union. In this context, some practices concerning investment firms using tied agents recently emerged as a potential source of circumvention of the legal framework. ESMA believes that these issues have a more general relevance, and it is thereby important to identify the supervisory expectations on firms using tied agents in a convergent manner across the Union. Therefore, this supervisory briefing takes into account all cases where an EU firm uses tied agents; a specific focus is given to cases where tied agents are legal persons that are controlled or have close ties with other entities or third country entities. This supervisory briefing covers: (i) the supervisory expectations when firms appoint tied agents; and (ii) the supervisory expectations on firms using tied agents in their on going activities.

Date of publication: 02/02/2022

4. Market infrastructure

4.1 Custody rules

(i) **EU**

4.2 EMIR

(i) **EU**

Commission Implementing Decision (EU) 2022/174 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with EMIR

Status: Published in the OJ

Date of entry into force: 10/02/2022

Date of application: 01/07/2022

The Commission Implementing Decision (EU) 2022/174 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with EMIR, has been published in the OJ. The Decision extends the temporary equivalence of UK CCPs to 30 June 2025 from the expiry of the previous Implementing Decision on 30 June 2022. The EC has also begun consulting on potential measures to improve the competitiveness of EU CCPs and clearing activities, while ensuring that their risks are appropriately managed and supervised.

Areas covered by the EC's proposals include: (i) making it easier for pension scheme arrangements to clear their transactions at EU CCPs; (ii) widening the scope of clearing members and clients accessing CCPs to include entities such as private entities that do not access CCPs directly; (iii) encouraging clearing by public authorities; (iv) broadening the scope of the products offered for clearing or required to be cleared to include products such as equity derivatives, repos and foreign exchange derivatives; (v) measures to reflect the greater systemic importance of Tier 2 third country CCPs in the context of banking rules and supervision, and the potential use of macroprudential tools to address financial stability risks arising from over-reliance on Tier 2 CCPs; and (vi) measures aimed at EU CCPs, such as ways to support them in expanding their range of clearing services and improving the current setup of payment and settlement arrangements available to them in the EU. The deadline for comments is 8 March. The EC has also published a call for evidence for an impact assessment, in which it indicates that it plans to adopt any legislative proposals in Q3 2022.

Date of publication: 09/02/2022

EC: Commission Delegated Regulation (EU) .../... amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. For more information, please see section 3.1 above.

Date of publication: 08/02/2022

EC: Targeted consultation on the review of the central clearing framework in the EU

Status: Consultation

Deadline for the submission of comments: 08/03/2022

The EC has launched a targeted consultation on the review of the central clearing framework in the EU. This consultation seeks feedback on possible measures, legislative and/or non-legislative, to improve the competitiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised. This is part of the way forward for the central clearing announced by Commissioner McGuinness on 10 November 2021 and takes into account the reflections made by the European Commission over the last months on the risks associated with over-reliance on third country infrastructures and the need to increase clearing capacity in the EU.

The consultation is directed, in particular, at stakeholders participating in central clearing, including central counterparties, banks and other financial institutions, insurance companies, investment and pension funds, corporates.

Date of publication: 08/02/2022

EC: Call for evidence on EMIR targeted review

Status: Political discussion

Deadline for the submission of comments: 08/03/2022

The EC has launched a call for evidence on an EMIR targeted review. It proposes to amend the current framework applying to EU central counterparties (CCPs) and to those market participants using their services. The amendments are intended to be introduced with a regulation and aim to make the EU a more attractive clearing hub, including measures to enhance the liquidity in EU CCPs and to strengthen the EU's supervisory framework for CCPs. The adoption of the planned proposal by the Commission is scheduled for the third-quarter of 2022.

Date of publication: 08/02/2022

ESMA: Recommendation to start clearing obligation for pension funds in June 2023

Status: Final

ESMA has published a letter, dated 25 January 2022, it sent to the EC providing its views on the clearing obligation for pension scheme arrangements (PSAs) under EMIR, and recommending the end of the current exemption from the clearing obligation with a one-year implementation period. In the letter, ESMA, following its assessment, concludes that PSAs are largely operationally ready to clear their OTC derivatives. However, as developed in the annex, there are a number of considerations that would justify providing sufficient time before the clearing obligation would start applying to PSAs. In particular, PSAs and the relevant market participants need sufficient time to finalise their clearing and collateral management arrangements in order to absorb the important additional cleared volume corresponding to PSAs' OTC interest rate derivative trading activity that is not yet voluntarily cleared. In addition, the start of the clearing obligation for PSAs should be considered in the context of the broader plan to build clearing capacity in the EU and reduce reliance on UK CCPs. Therefore, ESMA recommends to start applying the clearing obligation to PSAs from 19 June 2023. Based on ESMA's recommendation, the EC will decide on whether to grant the suggested extension of the exemption until June 2023.

Date of publication: 01/02/2022

4.3 Stock exchanges

(i) Eurozone

ECB: Statement of commitment to the FX global code

Status: Final

All members of the ESCB, including the ECB, have issued renewed statements of commitment to the FX Global Code (the Code). The Code was updated mid-2021 to keep it relevant and aligned with the ongoing evolution of the foreign exchange market and continues to set the standard for good market practice. With these Statements of Commitment, the members of the ESCB emphasise that the principles of the Code are important in ensuring the continued integrity and effective functioning of

the foreign exchange market. To fully achieve the objective of the Code, the EU central banks also encourage foreign exchange market participants in their jurisdictions to review the updated Code and renew their Statements of Commitment.

Date of publication: 15/02/2022



5. Anti-money laundering

(i) EU

EBA: Report on competent authorities' responses to the 2020 Luanda Leaks

Status: Final

The EBA has published its assessment of NCAs' responses to the 2020 Luanda Leaks. In January 2020, the International Consortium of Investigative Journalists (ICIJ) published hundreds of leaked documents that focused on the financial affairs of Ms Isabel dos Santos, the daughter of a former president of Angola, and various companies and individuals linked to her, known as the Luanda Leaks. The information contained in the leaked documents appeared to confirm long-standing allegations that Ms dos Santos used Angolan government funds illicitly to benefit herself and her family.

The EBA report into NCAs' approaches to identifying and tackling ML/TF risks highlighted by the Luanda Leaks' key findings include: (i) NCAs' approaches to identifying and tackling ML/TF risks highlighted by the Luanda Leaks differed significantly across NCAs and varied beyond what the EBA would have expected under a risk-based approach. More than half of all NCAs took action whether or not their jurisdictions were mentioned in the ICIJ leaks. Of these, several NCAs subsequently identified institutions that had links with Ms Isabel dos Santos and her associates, in spite of the fact that these institutions had not been explicitly mentioned by the ICIJ. However, nearly a third of NCAs took no action; (ii) not all NCAs took advantage of existing cooperation channels to exchange information and improve their understanding of the ML/TF risks to which their sector was exposed. This was evident domestically, between finance intelligence units and NCAs, and also internationally where NCAs had identified links with foreign credit and financial institutions that operated branches or subsidiaries; and (iii) good practice examples included steps by NCAs to put in place dedicated processes to identify and swiftly react to instances of crystallised ML/TF risk, as was the case in the Luanda Leaks.

Date of publication: 22/02/2022

Commission Delegated Regulation (EU) 2022/229 amending Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries supplementing Directive (EU) 2015/849

Status: Published in the OJ

Date of entry into force: 13/03/2022

The Commission Delegated Regulation (EU) 2022/229, which amends Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries with strategic AML and CTF deficiencies under MLD4, has been published in the OJ. The Delegated Regulation: (i) adds Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal and South Sudan to the list; and (ii) removes the Bahamas, Botswana, Ghana, Iraq and Mauritius from the list.

Date of publication: 21/02/2022

ECB: Opinion on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLAR)

Status: Draft

The Council of the EU has published an opinion of the ECB on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLAR). Overall, the ECB welcomes the package of four legislative proposals, including AMLAR, published by the Commission on 20 July 2021, with the aim of strengthening the Union's rules concerning AML/CTF.

Date of publication: 17/02/2022

ECB: Opinion on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Status: Draft

The Council of the EU has published an opinion of the ECB on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, in addition to the above entry.

Overall, the ECB welcomes the package of four legislative proposals, including AMLAR, published by the Commission on 20 July 2021, with the aim of strengthening the Union's rules concerning AML/CTF.

Date of publication: 17/02/2022

ECON: Draft report on the proposal for a regulation on information accompanying transfers of funds and certain crypto-assets

Status: Draft

The European Parliament's Economic and Monetary Affairs Committee (ECON) has published its draft report, dated 7 February, on the proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets. The draft report contains a draft European Parliament legislative resolution, and suggests amendments to strengthen the Regulation by including crypto-assets. Indeed, crypto-assets have remained outside the scope of the Transfer of Funds Regulation, which only applies to conventional funds, and this loophole enables the use of crypto-assets to facilitate, fund and hide criminal activities and launder proceeds. To fill this void, the draft report puts forward the following key proposals: (i) no exemptions based on the value of the transfer; (ii) it should be clarified that the Regulation applies also to transfers from or to crypto-asset wallets based on a software or hardware not hosted by a third party, known as 'unhosted wallets', provided that a crypto-asset service provider or another obliged entity is involved. Information should be obtained by the crypto-asset service provider directly from its customer and should be held and made available to competent authorities; (iii) crypto-asset service providers should also be expected to obtain information on the source and destination of crypto-assets involved in a transfer; (iv) crypto-asset service providers are expected to transmit required information also to crypto-asset service providers established outside the Union. However, before transmitting such information, crypto-asset service providers should identify their counterparty and assess whether they can reasonably be expected to comply with the travel rule and protect the confidentiality of personal information; (v) the EBA should maintain a public register of non-compliant crypto-asset service providers, consisting of entities which cannot be linked to any recognised jurisdictions, do not apply any identification measures on their customer and offer anonymising services, given their role in undermining the effectiveness of AML/CFT systems and controls; and (vi) the current recast proposal should be decoupled from the rest of the new AML package and should be linked to the existing AMLD framework until the entry into force of the new regime, while preserving the alignment with the upcoming MiCA Regulation.

Date of publication: 15/02/2022

6. Payments

6.1 Payment services/E-money

(i) EU

EBA: Final Report on Guidelines on the limited network exclusion under the revised Payment Services Directive

Status: Final

Date of application: 01/06/2022

The EBA has finalised its Guidelines on the limited network exclusion under PSD2. The EBA clarifies how NCAs should assess whether a network of service providers or a range of goods and services qualify as 'limited' and are, therefore, not subject to PSD2. Payment instruments that might benefit from this exclusion include store cards, fuel cards, public transport cards, and meal vouchers. The Guidelines aim at addressing inconsistencies on how the limited network exclusion has been applied across the EU in the past.

Following the responses received during the public consultation, the EBA further clarified certain aspects in relation to the assessment criteria and indicators, including their mandatory nature. The EBA also clarified that the functional connection between goods and services should be based on a specific category of goods and services with a common purpose, rather than a leading good or service, as originally proposed in the consultation paper.

The application date of the Guidelines is complemented with an additional three-month transitional period for issuers that already benefit from the exclusion to submit a notification to their NCA.

Date of publication: 24/02/2022

EPC: Updated mobile initiated SEPA (instant) credit transfer payments and technical interoperability guidance (MSCT IG)

Status: Final

The European Payments Council (EPC) has updated its Mobile Initiated SEPA (Instant) Credit Transfer Payments (MSCT) and Technical Interoperability guidance. The document aims to provide an insight into the main issues related to the initiation of (instant) SEPA credit transfers for different payment contexts such as person-to-person, consumer-to-business (retail payments including both in-store and m-commerce payments) and business-to-business payments, by describing MSCT use cases.

The document includes: (i) the necessary maintenance in view of market and technical developments during the past years and addresses the comments received through the EPC's consultation held last year; (ii) updates in view of the answers received on a number of questions posted to the EBA Q&A tool; (iii) the integration of various documents on the technical interoperability of MSCTs and new MSCT interoperability models published separately over the past year; (iv) new work on MSCT interoperability with respect to unsuccessful and R-transactions (refunds, returns, rejects, refusals and reversals) and on MSCT technical interoperability messages; and (v) amendments to align the document with that on Standardisation and Governance of QR codes for Instant Payments at the Point of Interaction, published in November 2021.

Date of publication: 21/02/2022

7. Institutional supervisory framework

(i) EU

EBA: Adjustments to the Single Rulebook Q&A process

Status: Final

The EBA has, in agreement with the Commission, made adjustments to the Single Rulebook Q&A process to ensure that questions are answered efficiently and within a reasonable time. In addition to these adjustments, other measures are taken to overcome a backlog of older questions received through the Q&A tool prior to 1 January 2020 when the Q&A process was updated as part of the last ESAs Review. Q&As received prior to 1 January 2020, which the EBA has not addressed so far, will be rejected, unless they are very close to being finalised. The EBA will prioritise Q&As that can contribute most to the harmonisation of regulation and supervision in the EU. To do this, the admissibility criteria have been adjusted to ensure that the work prioritises issues that: (i) are relevant to a broad set of stakeholders; (ii) are material from a prudential, payments, consumer protection, resolution or another perspective within the EBA's remit; and (iii) need guidance or clarification. These criteria should also be taken into account when resubmitting questions that were rejected as indicated above. The EBA is also taking measures to target closing Q&As within nine months, including focusing the process on answering those Q&As which raise material issues relevant for a broad set of stakeholders where additional EBA guidance or clarification would add real value. If, exceptionally, this period is unlikely to be met, the submitter will be informed and additional steps taken to ensure prompt finalisation. Q&A submitters and other stakeholders are invited to review the updated Q&A webpages and the additional background and guidance for asking questions.

Date of publication: 11/02/2022

(ii) International

FSB: Letter to G20 finance ministers and central bank governors

Status: Final

The FSB has published a letter, dated 14 February, sent to G20 finance ministers and central bank governors ahead of their February 2022 summit. The letter lays out how the FSB's future policy work will promote global financial resilience during the coming year. An annex provides a complete list of FSB deliverables to the G20 in 2022. The initiatives include: (i) supporting financial market adjustment to a post-Covid-19 world. The FSB will report to the G20 on policy considerations to support a more even, sustainable and inclusive global recovery, and on effective financial sector practices for national authorities to consider addressing the effects of Covid-19 scarring. This will comprise an interim report in July and a final report in October; (ii) reinforcing financial system resilience in the light of the Covid-19 experience. In October, the FSB will deliver a comprehensive progress report on the various initiatives under the non-bank financial intermediation (NBFI) work programme to the G20 Summit, including on the main findings of relevant FSB and SSB initiatives and on policy proposals to address systemic risk in NBFI. This includes assessing the effectiveness of the FSB's 2017 asset management recommendations on liquidity mismatch in open-ended funds and considering what additional steps may be needed to address any identified shortcomings; (iii) harnessing the benefits of digitalisation while containing its risks. In October, the FSB, in coordination with the CPMI and other SSBs, will deliver a progress report on the G20 Cross-Border Payments Roadmap, and will also report on the implementation approach for monitoring progress towards the Roadmap's targets. The FSB will keep the G20 updated on the FSB's work on crypto-assets. Specifically, in October, the FSB will deliver a consultative report on its review of the high-level recommendations in the FSB's 2020 stablecoin report, and how any gaps identified could be addressed by existing frameworks; and (iv) addressing financial risks from climate change. The FSB will report on its work to progress the Roadmap to address climate-related financial risks, which will follow a July report on the first year of the Roadmap.

Date of publication: 17/02/2022

8. Investment funds

8.1 Prudential regulation

(a) Compliance

(i) EU

ECA: Recommendations on improvements to EU investment funds framework

Status: Final

The European Court of Auditors (ECA) published a report on the EU's investment funds framework, which sets out a series of recommendations to improve the framework by 2024. Issues highlighted include: (i) despite efforts to develop the single market, almost 70% of the EU funds market is still concentrated in just four Member States: Luxembourg, Ireland, Germany and France; (ii) while EU actions have enabled a single market for investment funds to be established, notably through the passporting regime, true cross-border activities and benefits for investors remain limited. The legal framework mainly consists of directives, which require Member States to implement national rules leading to significant regulatory differences. Therefore, minor revisions of the legal framework will not be sufficient to achieve a true single market; (iii) ESMA has strived to promote supervisory convergence, resulting in slightly improved quality of supervision and fewer divergences. However, ESMA cannot measure this progress, and has limited knowledge of whether an equivalent level of supervision is performed across Member States; (iv) EU's actions have increased investor protection. For instance, they enhance transparency for investors, in particular, on investment risks, performance and costs. However, investors are still not sufficiently protected from undue costs or against biased advice from financial intermediaries; and (v) no inventory of existing practices in Member States to monitor systemic risk has been carried out. ESMA has not carried out supervisory stress tests as required, but has simulated stress based on market data and, therefore, the effective monitoring of systemic risks and risks to investors depends on the availability of suitable data. However, there is no harmonised reporting regime for UCITS, and reporting on AIFs lacks details. So far, ESMA and the ESRB have not fully explored the possibility of using existing data collected by central banks, relying instead on less reliable data from commercial providers.

Date of publication: 21/02/2022

ESMA: Final report on the Opinion on the review of the MMF Regulation

Status: Final

ESMA has published a final report, dated 14 February, containing its Opinion on the review of the Money Market Fund (MMF) Regulation. This Opinion, found in Annex I to the report, sets out proposed reforms to the regulatory framework for EU MMFs under the MMF Regulation. The proposals seek to improve the resilience of MMFs by addressing, in particular, liquidity issues and the threshold effects for constant net asset value (CNAV) MMFs. The proposed reforms result from the lessons learnt from the significant liquidity difficulties faced by MMFs during the initial outbreak of the Covid-19 pandemic in March 2020.

The ESMA Opinion includes policy measures: (i) addressing the threshold effects for CNAV MMFs, by: (a) removing the possibility to use amortised costs for low volatility NAV (LVNAV)s MMFs; and (b) decoupling regulatory thresholds from suspensions, gates and redemption fees for LVNAV/CNAV MMFs; and (ii) addressing liquidity related issues by: (a) ensuring mandatory availability of at least one liquidity management tool for all MMFs; (b) amendments of the Daily liquid asset/Weekly liquid assets ratios as well as the pool of eligible assets, including public debt assets, which can be used to satisfy these liquidity ratios; and (c) inclusion/reinforcement of the possibility to temporarily use liquidity buffers in times of stress.

In addition, ESMA is proposing complementary reforms aimed at enhancing MMFs' preparedness for a crisis. These include enhancements of reporting requirements and the stress testing framework, as well as clarification of the requirements on external support and new disclosure requirements linked to the rating of MMFs. ESMA has sent its Opinion to the Commission and will work closely with it throughout the review of the MMF Regulation. The Guidelines on MMF Stress tests will be further reviewed this year to take particularly into account the interdependencies between the different risk factors under certain market

situations (see update below). ESMA will be consulting on this review in 2022 and the outcome will be published by the end of the year.

Date of publication: 15/02/2022

ESMA: Final report on updated Guidelines on stress test scenarios under the MMF Regulation

Status: Final

ESMA has published its annual final report, dated 14 February, on the Guidelines on stress test scenarios under Article 28 of the Money Market Funds (MMF) Regulation. These Guidelines are updated at least every year taking into account the latest market developments. The Annex contains the full text of the updated Guidelines and the calibration of the scenarios for 2021 – updates are in red in the text of the Guidelines. The shocks have been calibrated to be severe, plausible and consistent with the ECB's and the ESRB's projections, taking into account the impact of the Covid-19 pandemic. The scenario calibration reflects important systemic risks, including widespread defaults in the private sector due to any deep global recession, any re-emergence of sovereign financing risk and debt sustainability concerns, and instability and pockets of illiquidity in financial markets. Next, MMFs and their managers are expected to measure the impact of the common reference stress test scenarios specified in the Guidelines. On the basis of these measurements, they are expected to fill in the reporting template referred to in Article 37 of the MMF Regulation and send the results to NCAs with their quarterly reports required by Article 37. The new 2021 parameters set out in the updated Guidelines included in this final report will have to be used for the purpose of the first period to be reported following the start of the application of the updated Guidelines, which is two months after the publication of their translations. Until then, managers should use the parameters set in the 2020 Guidelines and report the results accordingly. In addition to the annual review of the Guidelines, ESMA intends to consult stakeholders on the revision of Section 4.8 of the Guidelines by Q2 2022.

Date of publication: 15/02/2022

9. Special rules for real estate financing and covered bonds

9.1 Covered bonds

(i) EU

EC: Commission Delegated Regulation (EU) .../... amending Delegated Regulation (EU) 2015/61 to supplement Regulation the CRR with regard to LCR for credit institutions

Status: Adopted by the EC

The EC has adopted the Commission Delegated Regulation amending Delegated Regulation (EU) 2015/61 to supplement the CRR with regard to liquidity coverage requirement for credit institutions to cater for covered bonds. For more information, please see section 1.1(d) above.

Date of publication: 10/02/2022



10. Special topics

10.1 FinTech/Digital finance

(i) EU

EP: Announcement to consider proposed Regulation on pilot regime for market infrastructures based on DLT

Status: Draft

The EP has announced that it will consider the proposed Regulation on a pilot regime for market infrastructures based on DLT during its plenary session to be held from 23-24 March. The pilot regime lays down the conditions for acquiring permission to operate a DLT market infrastructure, defines which DLT financial instruments can be traded and details the cooperation between the operators of DLT market infrastructures, NCAs and ESMA. The EC adopted the proposed Regulation in September 2020 as part of its Digital Finance Strategy.

Date of publication: 08/02/2022

ESMA: Reports on the outcomes of two calls for evidence on digital finance

Status: Final

In addition to the Joint ESAs' response to the EC Call for Advice on digital finance (see below), ESMA has published two reports, setting out the feedback to two calls for evidence it launched, one public call for evidence and one for the National Competent Authorities (NCAs), in response to the EC's request. Its findings from its public call for evidence include that: (i) there was a broad consensus that the growth of digital finance has contributed to greater fragmentation of the financial value chain, however, this was not necessarily an undesirable trend because outsourcing to third party service providers enables financial firms to focus on their core products; (ii) half of the respondents confirmed the existence of platforms bundling different financial services from different financial firms in the EU, particularly fund distribution platforms; (iii) overall, respondents recognised the cross-border nature of platforms and fully support enhanced cross-sectoral and cross-border cooperative arrangements and monitoring practices; and (iv) a common observation from respondents is that BigTech currently participates in financial services either through partnerships or directly with a focus on the areas that are subject to a less stringent regulatory framework, not capital intensive and/or show higher returns on equity.

- [Public call for evidence on digital finance](#)
- [Survey to NCAs on digital finance related issues](#)

Date of publication: 07/02/2022

ESAs: Joint response to EC Call for Advice on digital finance

Status: Final

The European Supervisory Authorities (ESAs) have published a joint report setting out their findings and advice in response to the EC's Call for Advice on digital finance and related issues. In summary, the ESAs' recommendations relate to: (i) the need for a holistic approach to the regulation and supervision of the financial services value chain; (ii) strengthening consumer protection in a digital context, including through enhanced disclosures, complaints handling mechanisms, mitigants to prevent mis-selling of tied/bundled products, and improved digital and financial literacy; (iii) promoting further convergence in the classification of cross-border services; (iv) promoting further convergence in addressing AML/CFT risks in a digital context; (v) ensuring effective regulation and supervision of mixed activity groups, including a review of prudential consolidation requirements; (vi) strengthening supervisory resources and cooperation between financial and other relevant authorities, including on a cross-border and multi-disciplinary basis; and (vii) the need for the active monitoring of the use of social media in financial services.

Date of publication: 07/02/2022

(ii) International

FSB: Assessment of risks to financial stability from crypto-assets

Status: Final

The FSB has published a report assessing the risks to financial stability from crypto-assets. The FSB notes that crypto-asset markets are fast evolving and could reach a point where they represent a threat to global financial stability due to their scale, structural vulnerabilities and increasing interconnectedness with the traditional financial system. The rapid evolution and international nature of these markets also raise the potential for regulatory gaps, fragmentation or arbitrage. The report: (i) examines developments and associated vulnerabilities relating to three segments of crypto-asset markets: (a) unbacked crypto-assets (such as Bitcoin); (b) stablecoins; and (c) decentralised finance (DeFi) and crypto-asset trading platforms. It notes the close, complex and constantly evolving interrelationship between these three segments, which need to be considered holistically when assessing related financial stability risks; (ii) highlights a number of vulnerabilities associated with crypto-asset markets. These include: (a) increasing linkages between crypto-asset markets and the regulated financial system; (b) liquidity mismatch, credit and operational risks that make stablecoins susceptible to sudden and disruptive runs on their reserves, with the potential to spill over to short-term funding markets; (c) the increased use of leverage in investment strategies; (d) concentration risk of trading platforms; and (e) the opacity and lack of regulatory oversight of the sector. The report also notes wider public policy concerns related to crypto-assets, such as low levels of investor and consumer understanding of crypto-assets, money laundering, cyber-crime and ransomware; and (iii) notes that financial stability risks could escalate rapidly and calls for timely and pre-emptive evaluation of possible policy responses.

The FSB will continue to monitor developments and risks in crypto-asset markets. It will explore potential regulatory and supervisory implications of unbacked crypto-assets, including the actions FSB jurisdictions have taken, or plan to take, to address associated financial stability threats. The FSB will also continue to monitor and share information on regulatory and supervisory approaches to ensure effective implementation of its high-level recommendations for the regulation, supervision and oversight of so-called “global stablecoin” arrangements.

Date of publication: 16/02/2022

10.2 Sustainable finance

(i) EU

k Council: Adoption of its position on the corporate sustainability reporting directive (CSRD)

Status: Adopted by the Council

The European Council has adopted its position on the corporate sustainability reporting directive (CSRD). This proposed Directive will revise the Non-financial Reporting Directive (NFRD), intending to complement the European sustainable finance strategy. The amendments of the Council concern the scope of the proposal by the European Commission, aiming to ensure that reporting requirements are not too burdensome for listed SMEs (since the obligations do not apply to other SMEs) and that they have sufficient time to adapt to the new rules.

Further discussions on the proposal with the European Parliament are expected to start in spring 2022.

Date of publication: 24/02/2022

EC: Proposal for a Directive on corporate sustainability due diligence and amending Directive (EU) 2019/1937

Status: Draft

The EC has published a proposal for a Directive on corporate sustainability due diligence and amending Directive (EU) 2019/1937. The proposal introduces a duty of sustainable due diligence on large EU and non-EU companies with significant EU activity. Within this due diligence, the companies will have to identify, address and remedy as well as prevent their actual or potential adverse impact on human rights (including social, trade union and labour rights) and the environment (contributing to climate change or deforestation, for example) in their operations, the actions of their subsidiaries and within their value chains.

This due diligence, integrated into all corporate policies, will have to be updated annually and its implementation and effectiveness will have to be monitored and measured regularly.

Following an adoption by the European Parliament and the Council, member states will be required to implement the Directive within two years.

Date of publication: 23/02/2022

ESMA: Call for evidence on an approach to climate risk stress testing of central counterparties

Status: Consultation

Deadline for the submission of comments: 21/04/2022

ESMA has launched a call for evidence on the methodology to assess climate risk with a new stress testing framework for CCPs. ESMA seeks stakeholders' views on: (i) a proposed classification of climate risks relevant to CCPs; (ii) the methodology to build an EU-wide climate risk stress testing framework for CCPs; (iii) how to best calibrate this stress test; and (iv) the current development of climate risk assessments by CCPs. ESMA has identified four different pillars of climate risk that may adversely impact CCPs: rapid transition risk, physical risk, business risk and collateral replacement risk. The information gathered through the Call for Evidence will be used as the building blocks of a future EU-wide CCP climate stress test.

Date of publication: 23/02/2022

EBF, UNEP FI: Practical approaches to applying the EU Taxonomy to bank lending

Status: Final

The United Nations Environment Programme Finance Initiative (UNEP FI) and the European Banking Federation (EBF) published a report on the practical approaches to applying the EU Taxonomy to bank lending. The findings of this report will support banks in understanding the EU Taxonomy, its requirements and its application for disclosure requirements which covers both mandatory and voluntary aspects. It focuses on: (i) disclosure requirements under the EU Taxonomy Disclosure Delegated Act, including expectations for 2022 and 2023 and how the green asset ratio is designed to operate; (ii) how the EU Taxonomy could be further used to gather EU Taxonomy compatible information for bank clients who do not yet have an obligation to disclose, such as SMEs and non-EU companies; (iii) addresses compliance with minimum safeguards of the Taxonomy regulation; and (iv) how the EU Taxonomy could be used by banks that wish to engage with clients whose economic activities are eligible for analysis under it, but are not yet aligned with the listed Technical Screening Criteria. The aim of this report is to present a comprehensive and practical approach to the EU Taxonomy, to support banks in their regulatory implementation journey and their client engagement efforts. The report examines possibilities of financing all activities capable of accelerating companies' transition to reach the EU's climate goals, in addition to taxonomy-aligned activities.

Date of publication: 14/02/2022

ESMA: Sustainable Finance Roadmap 2022-2024 with prioritisation of the fight against greenwashing

Status: Final

ESMA has published its new Sustainable Finance Roadmap for 2022-2024. Building on ESMA's 2020 Strategy on Sustainable Finance, the Roadmap sets out ESMA's deliverables on sustainable finance and how they will be implemented over the next three years. The Roadmap will serve as a practical tool to ensure that ESMA delivers on the wide array of sustainable finance tasks across several sectors in a coordinated way. In particular, ESMA identifies three priorities for its sustainable finance work: (i) tackling greenwashing and promoting transparency; (ii) building the capacities of the National Competent Authorities (NCAs) and ESMA in the sustainable finance field; and (iii) monitoring, assessing and analysing ESG markets and risks.

Within each of the three priorities, ESMA also identifies sectors where ESG-related risks and problems are currently perceived as having the highest potential impact on investor protection, orderly markets and financial stability. As well as dealing with cross-sectoral issues, the Sustainable Finance Roadmap will primarily concern the following sectors: (i) investment management. This includes contributing to the Commission's work on minimum sustainability criteria for SFDR Article 8 products, reviewing SFDR RTS, contributing to consistent implementation of new requirements through supervisory convergence actions, and undertaking work on climate change scenario analysis; and (ii) investment services. This includes, among other things, contributing to the consistent implementation of new/existing requirements related to the manufacturing and design of ESG products, information provided on ESG products as well as their marketing and distribution; (iii) issuers' disclosure and

governance, which comprises, among others, contributing to EU and international sustainability reporting standards; (iv) benchmarks. Work includes contributing to the Commission's work on aligning Climate Transition Benchmarks and Paris-Aligned Benchmarks with EU Taxonomy; (v) credit ratings and ESG ratings. ESMA will support the Commission in improving reliability and comparability of ESG ratings, and assess how credit rating agencies incorporate ESG factors in their methodologies; (vi) trading and post-trading. ESMA will undertake work to consider the impact of climate change in CCP stress testing, build analytical tools for monitoring EU carbon markets, and contribute to the consistent implementation of new requirements; and (vii) financial innovation. This will include identifying use cases of innovative technologies that could help the transition to a greener economy ('green FinTech'), and collecting evidence on recent trends and interactions in relation to green FinTech and sandboxes.

ESMA will shortly launch a call for stakeholder candidates to join a new Consultative Working Group supporting ESMA's Coordination Network on Sustainability. ESMA will keep the Roadmap, including the identified priorities and the sectors of focus, under review during the entire implementation period.

Date of publication: 11/02/2022

ClientEarth/PPI: Challenges to labelling of certain activities as sustainable under EU taxonomy

Status: Final

The environmental law organisation ClientEarth and a separate coalition of NGOs led by the Partnership for Policy Integrity (PPI) have sent internal review requests to the EC, claiming that it has unlawfully labelled bioenergy, bio-based plastics and chemicals used to make plastics as sustainable in the Climate Delegated Act. The PPI coalition's complaints focus on the forestry and bioenergy criteria in the Delegated Regulation that conflict with the Taxonomy Regulation, arguing that the Delegated Act violates: (i) Article 10 of the Taxonomy Regulation, which states activities 'qualify as contributing substantially to climate change mitigation' where they 'contribute substantially' to stabilising greenhouse gas (GHG) levels consistent with the temperature goal of the Paris Agreement by avoiding or reducing GHG emissions or through increasing removal of GHGs from the atmosphere; (ii) Article 19 of the Taxonomy Regulation, which requires the criteria to be based on science and employ the precautionary principle; and (iii) numerous additional issues, including the failure to provide quantitative criteria to limit carbon losses, air pollution, and ecosystem damage from forestry and bioenergy activities. The requests claim that the EC has infringed the Taxonomy Regulation by relying on flawed standards for biomass already provided under the recast Renewable Energy Directive, instead of assessing whether the available scientific evidence on biomass production is conclusive. The EC has 16 weeks to respond to the internal review requests. If the EC rejects the claims made by the NGOs, they will be able to bring their challenge before the General Court under the amended Aarhus Regulation.

- [Press release by ClientEarth](#)
- [Press release by Partnership for Policy Integrity \(PPI\)](#)

Date of publication: 04/02/2022

ESMA: Call for evidence on market characteristics for ESG rating providers in the EU

Status: Consultation

Deadline for the submission of comments: 11/03/2022

ESMA has launched a call for evidence on market characteristics for ESG rating providers in the EU. The call for evidence's purpose is to develop a picture of the size, structure, resourcing, revenues and product offerings of the different ESG rating providers operating in the EU. The call is mainly addressed to three target groups: (i) ESG rating providers; (ii) users of ESG ratings; and (iii) entities subject to rating assessment of ESG rating providers. This call for evidence is intended to complement a separate consultation to be launched by the EC that will seek stakeholder views on the use of ESG ratings by market participants and the functioning and dynamics of the market.

Date of publication: 03/02/2022

EC: Approval of draft Delegated Regulation on gas and nuclear activities

Status: Draft

The EC has approved a draft Delegated Regulation covering economic activities in the natural gas and nuclear energy sectors, and providing for specific disclosure requirements for natural gas and nuclear energy sectors under the Taxonomy Regulation.

This Complementary Climate Delegated Act: (i) introduces additional economic activities from the energy sector into the EU Taxonomy. The text sets out clear and strict conditions, under Article 10(2) of the Taxonomy Regulation, subject to which certain nuclear and gas activities can be added as transitional activities to those already covered by the first Delegated Act on climate mitigation and adaptation, applicable since 1 January 2022. These stringent conditions include: (a) for both gas and nuclear, that they contribute to the transition to climate neutrality; (b) for nuclear, that it fulfils nuclear and environmental safety requirements; and (c) for gas, that it contributes to the transition from coal to renewables; and (ii) introduces specific disclosure requirements for businesses related to their activities in the gas and nuclear energy sectors. Once translated into all official EU languages, the Complementary Delegated Act will be formally transmitted to the co-legislators for their scrutiny. Once the scrutiny period is over and if neither of the co-legislators objects, the Complementary Delegated Act will enter into force and apply as of 1 January 2023.

Date of publication: 02/02/2022

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